that presumption against him by showing in some court of the State where the warrant is issued that the facts are not consistent with the records upon faith of which the executive acted. The rights of the citizen are thus protected by giving him the opportunity to vindicate himself while the validity of official proceedings is upheld until conclusive error is shown.

DANA *v.* VALENTINE FOLLOWED IN ENGLAND. — In *Dana* v. *Valentine*, 5 Met. 8, the plaintiff owned certain vacant lots next to the defendant's slaughter-house, which caused offensive smells in the vicinity. The court held in a *dictum* that the plaintiff had an adequate remedy at law to prevent the defendant's gaining a prescriptive right to maintain the nuisance although the plaintiff could show no actual damage. And this *dictum* is generally followed in the United States. *Farley* v. *Gate City Gas Co.*, 31 S. E. 193 (Ga.). Some fifty years later the English Court of Appeal in Chancery had the same question presented to it, and gave a different answer. *Sturges* v. *Bridgman*, 11 Ch. D. 852. There the defendant, a confectioner, had been accustomed to use mortars in his kitchen for more than twenty years. The plaintiff then extended the rear of his house so that it adjoined the defendant's kitchen, and for the first time was seriously annoyed by the noise from the mortars. He was allowed an injunction, because the defendant had gained no prescriptive right inasmuch as the plaintiff had been unable to bring action until actual damage was suffered. No action on the case would lie without proof of substantial loss. The only possible distinction between the two cases — that in *Dana* v. *Valentine* the nuisance was always apparent, while in the English case it could not be perceived until the actual damage occurred — seems an unsatisfactory refinement.

The recent English decision in *Roberts* v. *Gwyrfai District Council*, [1899] 1 Ch. D. 583, would then seem revolutionary. The plaintiff had a natural right to the uninterrupted flow of a stream by his land. The defendant wrongfully altered the flow of water as it passed the plaintiff's tenement. No actual damage resulted, yet it was held that plaintiff's common law right had been infringed and the wrongdoer was enjoined from further interference. *Sturges* v. *Bridgman* was not brought to the attention of the court and the question was dealt with somewhat summarily. In following the accepted American rule it reached a wholesome result. While it is hard for one who at present does not wish to use his land in a certain way to be deprived of its future use, it is harder still for one committing the nuisance to be driven out of business simply because a neighboring proprietor decides to change his mode of occupation. It would be in the power of the latter to destroy at his option permanent and extensive works. Public policy would seem to require an exception to the rule that an action on the case requires substantial damage when a property right has been infringed for more than twenty years, though the damage has been merely nominal. 12 HARVARD LAW REVIEW, 284.

TENDENCIES FROM YEAR TO YEAR. — It is well settled law that if a tenant for years holds over at the end of his term, the landlord has the option of treating him as a trespasser, or as a tenant from year to year where such tendencies are allowed. This is founded on a supposed agreement between the parties, implied from the mere fact of holding over. *Conway*